

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/07/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.7014 OF 2001

and

W.M.P.NO.9996 OF 2001

Sri Jagatheesan Lorry Transports,
2-E, Second Floor,
Prince Arcode,
22-A, Cathedral Road,
Chennai 600 086. .. Petitioner

-Vs-

1. Indian Oil Corporation Limited,
Rep. by its Executive Director,
Marketing Division,
Southern Region,
Indian Oil Bhavan,
139, Mahatma Gandhi Road,
Chennai 600 034.

2. The Deputy General Manager,
Indian Oil Corporation Limited,
Marketing Division,
Southern Region,
Indian Oil Bhavan,
139, Mahatma Gandhi Road,
Chennai 600 034. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.K.S. Natarajan

For Respondents 1-2 : Mr.R. Subramanian

:J U D G M E N T

The petitioner has prayed for issuing a writ of Mandamus
forbearing the respondents from interfering with the payment of bills due and
payable by the respondents pursuant to the Work Order dated 5.7.2000 bearing
No.SR/LPG/BULK/TPT/409 in view of any claim from the Eastern Region and
consequently direct the respondents to effect payment of the bills due to the

petitioner for transportation of bulk LPG throughout the Southern Region in accordance with law.

2. The petitioner responded to Tender No.LPG/LOG 9 (SR) 99.

Subsequently, work had been awarded to the petitioner, who successfully completed the work relating to transportation of Bulk LPG on behalf of the respondent Corporation in the Southern Zone. The petitioner has submitted various bills in accordance with the terms and conditions for the work done till the end of March 2001. The representatives of the petitioner had also discussed the matter relating to payment with the respondents. However, it was learnt by the petitioner that the amount had been with-held on account of a claim lodged by the Eastern Region of the Corporation in respect of some other transaction against the petitioner not connected with the present transactions. It has been further asserted that, in fact, the petitioner is not liable for the amount claimed by the Indian Oil Corporation, Eastern Region and on the other hand the petitioner is entitled to receive some amounts even from the Indian Oil Corporation, Eastern Region. It is contended that the admitted amount payable to the petitioner by the Indian Oil Corporation, Southern Region cannot be held for the alleged liability in respect of some other Region. Accordingly, prayer has been made for issuing a direction as indicated.

3. In the counter of the second respondent filed on behalf of the respondents, it is indicated that some amount is to be paid by the petitioner to the Corporation for the loss caused in the Eastern Region. It has been further indicated that the writ petition is essentially for payment under a Contract and is not maintainable. It has been further indicated that even under the contract between the petitioner and the respondents, an Arbitration clause is available and if the petitioner is aggrieved by the non-payment, he should approach the appropriate forum, that is to say, either the Civil Court or the Arbitration.

4. Learned counsel appearing for the petitioner submitted that since there is no dispute regarding the amount payable by the Southern Region, there is no justification for with-holding payment of such amount for the alleged liability in respect of some other Region. It is further indicated that the action of the respondents in with-holding payment is arbitrary and cannot be sustained in law.

5. Learned counsel appearing for the respondents has placed reliance upon the decision of this Court reported in 2000(1) LLJ 769 (S. SITARAMAN v. HINDUSTAN PETROLEUM CORPORATION LTD. AND ANOTHER) wherein it has been held that the remedy under Article 226 of the Constitution of India is not applicable to enforce a contract.

6. It is not disputed that in the contract between the parties relating to the present transaction, there is an arbitration clause that if the applicant is aggrieved by the non-payment of amount due, it is always open to the petitioner to invoke such arbitration clause. Even otherwise, the claim of the petitioner is essentially a claim for payment of money under a contract for which invocation of writ jurisdiction is not the

appropriate remedy. The ratio of the decision of this Court, already cited above, is squarely applicable. In such view of the matter, I am not inclined to issue writ of Mandamus as prayed for in the present case leaving it open to the petitioner to establish his right in the appropriate forum in accordance with law.

7. Subject to the above observation, the writ petition is dismissed. No costs. Consequently, WMP.No.9996 of 2001 is closed.

Index : Yes

Internet : Yes

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